FOR THE LOVE OF CHRIST JESUS; THE BEGINNING AND THE END.

ESSENTIALS IN INTELLECTUAL PROPERTY LAW (COPYRIGHTS, PATENT, INDUSTRIAL DESIGNS, TRADEMARKS)

Composed by Nwosu Isochukwu.

Year: 2016

isochukwunwosu@gmail.com

KINDLY NOTE:

1. All you need is to understand the principles, then back it up with one or two popular case(s) therefore this note presents the discussion on this subject area in a succinct and straight-to-the-point manner, identifying the essential authorities.

2. My language and referencing are informal and abbreviations were used in this work. E.g. HC means High Court, CoA means, Court of Appeal, CFRN means, Constitution of the Federal Republic of Nigeria, etc. I apologize.

3. If viewing the notes on your laptop, press Ctrl + F (Ctrl key and Key F at the same time) to find a specific word/phrase. If viewing from a mobile device, select the "search" option from your browser's tool menu.

4. The next update of the note shall be released on April, 2020.

5. For advanced legal research on any area of law kindly visit vitesolutions.com.ng.

Thank you and hope you find the notes helpful.

Contents

INTELLECTUAL PROPERTY (COPYRIGHT LAW)

GENERAL INTRODUCTION

Intellectual property law is the body of laws which protect the outcome of intellectual activity.

May be industrial, scientific, artistic, literary, and so on.

The world thrives on ideas and works of creative individuals.

The law of intellectual property protects:

- Copyright
- Trademarks: Identify the source of a particular good. The link between the proprietor and the market.
- Patents: Protects new inventions and how things function.
- Industrial designs: protects shape, designs and other aesthetic features.

The law of intellectual property strives to balance two competing interest

1. The protection of creators and their works.
2. Safeguarding the interest of the public to access the works of such creators and gain knowledge and satisfaction.
   Intellectual property has a human right dimension can be seen in the provisions of **Section** 27 of the UDHR and **Section** 16 of the ICESC which seeks to balance the two competing claims mentioned above.

THEORIES UNDERLYING INTELLECTUAL PROPERTY.

1. **Natural law theory**: The Lockeian justification. Positing that the state should protect

persons who labour upon commonly held resources. For example, a pharmacist, exploiting nature and finding a cure for an ailment.

2. **Economic theory**: Posits that when creators are protected, they are able to recover investments and cost spent in production.
3. **Reward incentive theory**: That creators should be rewarded for their services to the society. So that they would work harder and more people would be encouraged to create and innovate.
4. **Development theory**: that intellectual property is a means to an end which is the realization of public interest and development. Because the protection would encourage innovation while also rewarding the creators.

COPYRIGHT.

HISTORICAL DEVELOPMENT

Traced to England with the introduction of printing and photocopying.

The crown, (in a bid to prevent the circulation of harmful, heretical, seditious or offensive materials) monitored and protected the printing of books. The stationers company (printers) wanted protect the right of authors.

The Statute of Anne enacted in 1709 (during the reign of Queen Anne) was the first truly copyright statute of England. Under the Act,

- Registration of the book with the stationers company before publication was a condition precedent for protection.
- Stationers had the power to seize and destroy books that were in contravention of the provision of the Act.
- Protection lasted for 14 years from the first publication. Another 14 years can be added if the author is still alive.

Subsequently, various Acts were enacted. However, the Copyright Act of 1911 of Britain was enacted to fuse all other statutes pertaining to copyright. This Act was extended to apply to the protectorates of Northern and Southern Nigeria.

The Berne convention and the Berlin revision of the convention removed the condition of pre-registration of works.

In 1970, the first indigenous copyright act of Nigeria was enacted. It repealed the 1911 act. The 1970 act faced some shortcomings and criticisms. It was eventually replaced by the 1988 Copyright Act which has undergone some amendments.

Presently, the Copyrights Act 1988 deals with the administration and enforcement of copyright in Nigeria. It is supplemented by other regulations they include;

- Copyright (Reciprocal Extension) Order, 1972.
- Copyright (Video Rental) regulation 1999,
- Copyright (Optical Disk Plants) regulation 2006 to mention a few.

The 1988 Act improved over the 1970 act and now provides for;

- The Nigerian Copyrights Commission (NCC) which is the copyright licensing body in Nigeria. Under **Section** 30.
- Simultaneous institution of civil and criminal suits against an infringer.
- Copyright inspectors with powers of the police.

ELIGIBLE WORK(S)

Meaning works that are worthy of protection.

Section 1 (1) of the Nigerian Copyright Act 1988 provides that works irrespective of their quality include:

a. Literary.
b. Musical.
c. Artistic work.
d. Cinematograph.
e. Sound recording.
f. Broadcast.

The use of the word "include" in **Section** 51 of the Act and the phrase; "works similar to" as it applies to literary works implies that the list is not exhaustive.

Section 51 of the Copyright Act defines the categories.

The 1988 act has introduced computer programs which is a welcome development.

The provision "irrespective of the quality" prevents the infringer from claiming that the work is rubbish.

Section 1(2) of the Copyright Act provides that; a **literary, musical or artistic** work shall not be eligible unless:

a. **Sufficient effort** has been expended in making the work to give it an original character.
b. It has been **fixed in a definite medium** of expression now known or later to be developed from which it can be perceived or communicated whether directly or with the aid of a machine.

Before we proceed, please note that copyright does not subsist in ideas, it is the product of such ideas that it protects. This has been noted Macmillan **V.** cooper and in the case of University of London Presss **V.** university tutorial press ltd.

A. SUFFICIENT EFFORT.

Originality is a fundamental theme of copyright, so also is the requirement of sufficient effort. The act fails to define "sufficient effort" nor does it illuminate upon the word; "original". Due to this lacuna, recourse shall be taken to case law interpretations.

It is relevant to note that originality in this context DOES NOT refer to novel or new works that have never been seen or heard of. As nothing is new under the sun. As

such, a work can be original notwithstanding the fact that it is not novel.

A central theme to have in mind (as has been noted in Ladbroke ltd **V.** Hill) is that the work must not be copied. It must have originated from the author's independent skill and judgment.

In Offery V. Chief S.O. Ola and others, the plaintiff designed a school record book titled. **"New era scheme of work and record book"** some years later, he noticed that the defendants were selling some similar record books. The court found that the book merely consisted of horizontal and vertical lines from page 1 to 52 and held that there was no evidence to show that sufficient effort has been expended in the production of the work as such it could not be called original.

In **University of London Press limited V. University Tutorial Press,** examiners were hired to create mathematics exam papers for the University of London and they were able to prove that they thought up the questions and did not copy the questions even though they drew from the wealth of knowledge in the field of mathematics. **Peterson J. held; that** "**Copyright Acts are not concerned with the originality of ideas but with the expression of thought**" (in this present case of a literary work; the expression of thought in writing.) furthermore, "original means that such expression must originate from the author and must not be copied".

In Macmillan and co limited **V.** Cooper, it was held (Lord Atkinson delivering the judgment) that it is the product of one man's skill, labour and capital that must not be appropriated by another. Not the elements or raw materials. The question is not whether the idea and materials used have never been used before. It is whether the same plan and arrangements have been used before for the same purpose.

A copyist cannot enjoy copyright.

In ICIC (directory publication limited) **V.** Ekko Delta (Nigeria Limited) and another, the plaintiff who were publishers of the national telephone directory of Nigeria published the directory of incorporated companies in Nigeria. The defendants also published the same. Leading to a depression in the plaintiff's business. When sued, the defendants were able to prove that the directories were not the original work of the plaintiffs as they copied from the federal ministry of trade and those of P and T and then turned around to claim ownership. The court restated that **a copyist cannot enjoy copyright**.

As such, it can be seen that independent skill, judgment and effort must have been expended in producing the literary, musical or artistic work… it must not be a mere copy of another's work.

There is no fixed quantum but a little independent level may suffice. Some jurisdictions refer to this requirement as the sweat of the brow principle.

- Compilations can be protected but the compiler must seek permission from the owners of the work.
- **The various authors in** a particular book have copyright in their works and can use it anywhere. The editor is the owner of the copyright of the book.
- **A change in medium or translation can accord one with copyright.**
  In Byrne **V.** Statist Company, On the request of his employer, the employee (a newspaper editorial staff of financial times) summarized and translated a speech. The court held that the employee had copyright in the translation because even though he was employed, it was done in his own time.

Factual things like; news, historical facts, and so on… belong to the public domain and can be used by anyone so long as it was not copied from another person's work verbatim. The reporter should apply skill in the diction he uses and the way such report is presented.

In Chicago Record-Herald **V.** Tribune Association: The court held that the Herald, in using parts of the article published by the Tribune including the style and presentation, had infringed the copyright of the tribune. Notwithstanding the fact that they gave credit to the tribune.

Copinger and Skone James posit that in determining if a work is original, the work should be looked upon as a whole.

CAN PROTECTION BE ACCORDED TO TITLES?

A title can be defined as a descriptive heading or a heading that identifies a work.

Generally, titles in themselves are not protected by copyright for being too short and insubstantial.

A claimant who wants to secure victory is advised to seek protection under trademark or alternatively make his claim under the tort of passing off.

In Exxon Corporation **V.** Exxon Insurance Consultants International Limited: The court held that there is no copyright in a name alone. It went further to note that even if the plaintiff sought protection under trademark, their claim would likely fail because the infringer in this instant case was not in the same market segment as the claimant.

Also,

In Francis, Day and Hunter limited **V.** 20th Century Fox limited: The court held that a